



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Utah State Office  
P.O. Box 45155  
Salt Lake City, UT 84145-0155

IN REPLY REFER TO:  
3484  
UTU- 0115850  
(UT-932)

CERTIFIED MAIL--Return Receipt Requested

Mr. Stan Wagner  
Ziegler Chemical & Mineral  
Star Route  
Vernal, Utah 84078

Re: Mining Plan for the Federal Gilsonite Lease U-0115850

### NOTICE OF NON-COMPLIANCE

During a routine inspection of your operation on June 27, 2002, the Bureau of Land Management (BLM) noted mining activities on Federal Gilsonite Lease U-0115850 that were not in compliance with your approved mining plan dated March 7, 2001.

The inspection was conducted by Mr. Stan Perkes of the BLM State office, and the following issues were found to be in Non-Compliance:

1. In conjunction with the activity on this lease, Ziegler has taken down, a barbed wire fence that had been erected to discourage public access to the vein and shaft and been removed in order to gain access to the "Old Mesa" C-1 shaft. The removal of this fence has not been approved in the current mine plan.
2. It was noted during the inspection that Ziegler had entered the "Old Mesa" C-1 shaft in an apparent attempt to place a pump down the shaft which was unsuccessful. The hole made in the cap was approximately 36 inches long by about 18 inches wide. (There was no indication that any reinforcing steel was placed into the cap). This activity is in Non-Compliance with your approved mining plan. There has been no approval granted to enter the C-1 shaft area and place a hole in the cap nor to take down the barbed wire fence.
3. During the inspection it was noted that the cap on the C-3 shaft had cracked. The shaft collar on the C-2 shaft is crumbling and there is a large hole to the west of this shaft where the vein has opened up to the surface. Paragraph 6.1 of the approved mine plan states ". . . Where the surface pillar covering the vein has been removed (old south vein mines) the void left from mining would be blasted shut." (The affected area was estimated to be 150 feet long). BLM now questions the extent of the area that needs to be closed. We would like Ziegler to submit justification as to why the area to be closed by blasting is only 150 feet long when the vein has been excavated for approximately 1350 feet from the C-3 to the C-1 shaft. If the vein does not

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DIVISION OF  
OIL, GAS AND MINING



have at least 35 feet of ore left as a barrier, the vein should be considered as a hazard and should be permanently closed in an appropriate manner such as blasting. BLM would like to see the shaft closures blasted closed. If this is not possible, BLM may accept a plan to have an upside down triangular plug placed in the shaft on competent rock and then covered with material. The caps on the C-1, C-2 and C-3 shafts must be removed and permanently sealed and temporarily repaired.

4. The mining plan states "A partition will be constructed around the bottom of the ore bin to prevent wind from blowing Gilsonite dust while being loaded into the trucks." (Page 9). This has not been constructed.
5. The lease specifically requires that production maps be sent to BLM by the 15<sup>th</sup> day of each calendar quarter for the previous quarter. BLM has not received a map on this lease since the mining plan dated March 7, 2001.

Most of these instances of non-compliance stem from your failure to obtain approval prior to making changes in the mining plan. Ziegler Chemical and Mineral must obtain modifications to the mining plan **prior** to modifying operations. The regulations provide that to obtain approval of an exploration or mining plan modification, the operator/lessee shall submit a written statement of the proposed modification and the justification for such modification. Any proposed exploration or mining plan modifications(s) shall **not be implemented** unless previously approved by the authorized officer." (43 CFR 3592.1(d)(1)-emphasis added).

Requirements to Correct the Mining Plan Non-compliance:

1. Restraining the barbed wire fence along the old workings on the Federal Lease UTU-0115850. Due to the safety hazard that leaving the fence down presents to public safety and health. **This shall be put into place immediately.**
2. In conjunction with this notice of Non-Compliance, you are to prepare a proposal to permanently close the vein and the shafts (C-1, C-2 and C-3) shafts that have been mined on the lease. If permanent closure is in the future, the proposal must include an interim plan to deal with this problem until permanent closure can take place. The proposal must address the reasoning why only 150 feet of vein is to be blasted shut. BLM requests a meeting with you immediately to discuss your proposal and address a plan for permanent closure of the vein and shafts. As part of this meeting we will discuss the bonding situation to ensure proper compliance with the regulations. NOTE: the old inspection reports show that there were small amounts of methane and carbon dioxide in the mine at the C-2 shaft. All considerations should be made for the fact that explosive atmospheres could be present in the mines under the caps **You have 5 days from the receipt of this letter to complete this work and schedule a meeting with BLM.** You can set up the meeting by contacting Mr. Stan Perkes at 801-539-4036.
3. **You have 30 days after the meeting** with BLM to submit a final plan that will remedy the vein and shaft situation..
4. **You have 30 days from the receipt of this letter** to submit a plan for approval for the construction of the partition to keep the Gilsonite dust from being blown around during loading operations.
5. **You have 5 calendar days from the receipt of this letter** to supply a map of the mining by calendar quarters in the mine. The map must be signed by the mine manager or a representative of the company and dated. A registered surveyor does not have to sign the map. If this requirement is not met, BLM will hire a surveyor and bill the company for the work.



Compliance Failure: Failure to comply with this Notice of Non-Compliance will result in a cessation of operations order being placed on lease U-0115850 as per 43 CFR 3598.4(a).

Appeal Rights

Following the compliance period, you then have 30 calendar days to appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulation at 43 CFR Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office within 30 calendar days following at the end of the compliance period. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) for a stay of the effectiveness of this decision during the time that you appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and the petition for a stay must also be submitted to the Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards;

- (1) The relative harm to the parties if a stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of the immediate and irreparable harm if the stay is not granted, and;
- (4) Whether the public interest favors granting the stay.

Sincerely,

/s/ James Kohler

James F. Kohler  
Chief, Solid Minerals Branch

Enclosure  
Form 1842-1

cc: Tony Gallegos, Utah Division of Oil, Gas, and Mining, w/o enc.  
Gordon Ziegler, President, Ziegler Mineral and Chemical Corporation, 100 Jerico Quadrangle, Suite 140, Jerico, NY 11753

bcc: VFO  
Files:UTU-0115850  
Solid Chron  
Mine Plan  
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